IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.46 OF 1994.

Vitthal Jalindhar Kamble,
resident of Degaon,
Tal : Mohol,
District :Solapur .. Appellant
(Original Accused)

vs.

The State of Maharashtra .. Respondent.
(Original Complainant)

M.A.Choudhari, Advocate for the Appellant.

Smt.V.R.Bhosale, P.P. for the State.

CORAM : S.S.PARKAR &
S.R.SATHE, JJ.

DATED : 15TH OCTOBER,2004.

JUDGMENT (Per S.R.Sathe, J) :

1. Appellant, the Original Accused has preferred this appeal against the judgment and order passed by IInd Additional Judge, Solapur in Sessions Case No. 333 of 1992 whereby the accused was convicted for the offence punishable under

section 302 of I.P.C. and sentenced to suffer imprisonment for life, and for offence punishable under section 170 of I.P.C. to suffer R.I. for two years.

2. The brief facts giving rise to this appeal are as under :

. Deceased Dynaneshwar was a barber. His father Mahadeo was having hair cutting saloon at Patwardhan Kuroli. Accused represented to the deceased and P.W. Shahaji Patil that he is working as a conductor at Shivaji Nagar S.T. Depot, Pune. He told them that he has been transferred to Baramati and taken a room on lease at Indapur. Sometime in the month of July or August, accused told the deceased that he would secure a job for him, but the deceased will have to pay atleast Rs.10,000/- for the same. Accordingly, the father of the deceased obtained some money from different persons and paid amount to the tune of Rs.8000/- or so to the accused. Deceased Dynaneshwar and Shahaji Patil went to the room of the accused on 3.9.1992 and enquired about

the employment of the deceased. The accused told them that papers given by the deceased have been handed over in the office and that he would get the result by 15th September and in any case the work will be over by 16th September. However, on 7.9.1992 the accused met Shahaji as well as deceased and told the deceased that he should come to him on 14th at Mohol. Accordingly on 14.9.92 deceased Dynaneshwar went to Mohol. At that time he left a message for his friend Shahaji that he should come there alongwith tiffin and Rs.1000/- at about 10.00 a.m. Accordingly Shahaji Patil went to the room of accused on 14.9.1992. Accused and deceased both were present there. At that time accused told them that deceased would get the employment from 18.09.1992. Shahaji Patil therefore returned to Patwardhan Kuroli, while the deceased remained with the accused. At that time deceased told Shahaji Patil that he should again come with tiffin on 17.9.1992. Accordingly, Shahaji Patil went to Indapur at the house of the accused at about 10.00 p.m. The room was locked. However, witness Shahaji patil was knowing as to how the said room could be opened. He, therefore,

opened the door accordingly and slept in the room. At about 1.30 p.m. accused returned to his room. Naturally, Shahaji Patil asked him about the deceased. On that accused told him that deceased has gone to Baramati in the car of Mhaske Saheb and that deceased would join the duty on 18.9.1992. Hence both went to bed. On the next day morning i.e. on 18.9.1992 when Shahaji awoke he found that the accused had already left the room. He therefore went to S.T.Stand. There he met one Dattatraya Jadhav i.e. P.W.13. As he was also knowing accused, Shahaji Patil asked him whether he had seen the accused. On that Dattu Jadhav told him that he had seen him and he was saying that deceased has been sent to Baramati by the accused. By that time the accused went there. When these witnesses made query with him he again told them that the deceased has gone to Baramati for doing duty on Baramati Pandharpur S.T.Bus. Shahaji Patil and Dattu Jadhav therefore went to Baramati. After reaching there at about 12.30 noon they made enquiry in the S.T.Depot as to whether any fresh appointment has been made. When they were told that no fresh appointments have

been made, they showed the photograph of the accused in the said office, but the concerned person told them that no such person is working in the S.T.Department. Both of them therefore went to the house of the accused at Indapur. Accused also returned to the said room within short time. Naturally both of them again asked the accused about the whereabouts of deceased Dynaneshwar. At that time also the accused told them that the deceased is doing his duty at Baramati. They also asked to show the appointment order of deceased Dynaneshwar. Both the witnesses again therefore went to Baramati and made query as to whether Dynaneshwar has joined his duty. They came to know that Dynaneshwar has not joined the duty and they also received information that Dynaneshwar is infact not employed in the S.T.Department. Both the witnesses therefore got suspicion about the accused. They insisted the accused that he should show deceased Dynaneshwar to them. On that accused said that Dynaneshwar has gone to complete some work. At that time P.W.Shahaji Patil held the neck of accused and he noticed that there were blood stains on the banian of accused and some

scratches on his hand. Naturally, both of them made query with accused about the same. Accused told them that when he had been to Tembhurni he had a scuffle with one person. They also told accused that now they would not allow him to leave the place unless he would show Dynaneshwar to them. The said two witnesses therefore decided to take accused to their place and for that purpose all the three boarded Baramati Tuljapur S.T. bus which was to go via Valchandnagar. The accused was sitting in the driver's cabin in the S.T.Bus, while these two witnesses were sitting in the rear portion of the bus. When the bus reached near the junction the accused got down from the driver's door and ran away. Both the witnesses also got down and tried to search the accused, but they could not get the accused. They, therefore, went to the room of the accused. They found that the room was open. When they made query with the neighbours, they told them that the accused came from the backside and took away his luggage. They therefore again searched for the accused and they came to know that the accused is a resident of Village Degaon. They therefore went to Degaon and

made query about the accused with four to five persons who were passing by the road. Theytold them that the accused is a conductor and is resident of Degaon. Shahaji Patil and Jadhav told them that their friend is missing since last few days. The persons who had met them informed them that two to three days back one dead body was found in their village by the side of the road and it has been taken away by the police. Both the witnesses therefore went to the police station and then they identified the dead body as that of Dyaneshwar. In the meantime, on receipt of information about the dead body A.D.no 36/92 was registered by police. When police received the advance certificate, ASI Sitaram Yadav from Vairag Police Station filed complaint on behalf of the State for the offence punishable under section 302 of I.P.C. and accordingly crime was registered at number 97/92. The police then recorded the statements of the witnesses and collected the post mortem notes. They arrested the accused on 20.9.1992 and attached the clothes which were on his person. During the period when the accused was in the police custody he made a statement

before the police that he would produce the weapon thrown by him near the place of offence. Accordingly, the police called the panchas, drew the memorandum and then the accused led the police and panchas near the place of offence and from there they went to one field and accused produced one knife taking it away from the buses. The police attached the same under panchanama. All attached articles were sent to C.A. After completion of investigation, police submitted chargesheet against the accused for the offences punishable under section 170 and 302 of I.P.C. in the Court of Chief Judicial Magistrate, Barsi.

3. Finding that the accused is chargesheeted for the offence which is exclusively triable by the Court of Sessions, the learned J.M.F.C. committed the case to Sessions Court, Solapur. The IInd Additional Sessions Judge, Solapur framed charge, exhibit 3 against the accused for the offences mentioned above. The charge was read over and explained to the accused. He pleaded not guilty and claimed to be tried.

4. In order to bring home the guilt of the accused, prosecution examined as many as 20 witnesses, consisting of four panch witnesses namely P.W.1 Kashinath Langote-exhibit 19, P.W.2 Kishore Sonawane-exhibit 21, P.W.3 Adinath Ahire-exhibit 23, P.W.4 Vilas Sherkhane-exhibit 26. Besides, prosecution also examined P.W.5 ASI Sitaram Yadav-exhibit 28, P.W.6 Prabhakar Thombare-exhibit 30, P.W.7 Ramchandra Bhandage, owner of the cycle shop Bhandage Cycle Mart-exhibit 31, P.W.8 Bhima Atkare-exhibit 32, P.W.9. Nanasaheb Bhange-exhibit 33 from whom father of the deceased had obtained Rs.2000/- for giving to accused, P.W.10 Bhaskar Gurav-exhibit 34, P.W.11 Shahaji Patil -exhibit 35 who had seen accused and deceased together till 15.9.1992, P.W.12 Haridas Patil who had given Rs.5000/- to the father of the deceased for giving to the accused -exhibit 39, P.W.13 Datatraya Jadhav-exhibit 40 who had accompanied witness Shahaji Patil when they were searching for the deceased, P.W.14 Pandit Tawate-exhibit 41, P.W.15 Vilas Salunkhe, owner of Anant Cycle Mart-exhibit 42, P.W.16 Police Constable Namdeo Katakdound

exhibit 43 who carried the attached articles to C.A., P.W.17 Rajkumar Tavate-exhibit 46, P.W.18 Gurunath Kapse-exhibit 47 in whose presence police attached one shirt from the field, P.W.19 API Bharatkumar Rane-exhibit 48 who initially investigated the case and P.W.20 API Eknath Sakore-exhibit 50 who completed the investigation and submitted the chargesheet in the Court of J.M.F.C.Barsi. The prosecution also produced panchanama of place of offence exhibit 9, inquest panchanama exhibit 10, panchanama of attachment of clothes and articles exhibit 11, panchanama of house search of accused exhibit 12, post mortem notes exhibit 13, C.A. report exhibit 18, panchamama of the leather bag attached from the room of the accused exhibit 20, panchanama under which cycle register was attached exhibit 22, panchamama of banian of the accused exhibit 25, memorandum drawn by the police regarding statement made by the accused exhibit 27, complaint exhibit 29. From the suggestions put to the prosecution witnesses and from the statement of the accused recorded under section 313 of Cr.P.C. it appears that the defence of the accused was of total

denial. According to him he has been falsely implicated in the case due to political pressure. The accused did not adduce any evidence. After considering the evidence adduced by the prosecution, the trial court came to the conclusion that the accused has committed offences punishable under section 170 and 302 of I.P.C. Accused was therefore convicted and sentenced as mentioned above.

5. Being aggrieved by the said order of conviction and sentence the accused has preferred this appeal. In this appeal before us, Shri Choudhary, learned Advocate for the accused has urged only two points. Firstly, he submitted that there is no eye witness to the incident. The case rests on circumstantial evidence. The prosecution has not adduced cogent and convincing evidence to establish each and every circumstance so as to connect the complete chain and as such the lower court has erred in accepting the prosecution evidence and holding that the charges levelled against the accused are proved. He also canvassed before us that the evidence with regard to "last

seen" together is also not cogent and there is no witness who has said that the accused and deceased were seen together on the day of the incident. He, therefore, submitted that the appeal be allowed and the accused be acquitted. As against this, the learned APP Smt. Bhosale supported the judgment and order passed by the trial court.

6. It is the prosecution case that the accused was representing to others that he was serving as a S.T. Bus conductor at Shivaji Nagar S.T.Depot. He used to move in S.T.Bus conductor's uniform. Not only that, but the accused told the deceased and some other persons that he would give them employment as bus conductor in the S.T.Department and on that ground he collected money from those persons. The prosecution has therefore filed chargesheet against the accused for the offence punishable under section 170 of I.P.C. The said section runs as follows :

> **Personating a Public Servant :** " Whoever pretends to hold any particular office as a public servant, knowing that he does not hold such office or falsely personates any other person holding such office, in such assumed character does or attempts to do any act under colour of such office, shall

be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

7. In order to prove the charge under section 170 the prosecution has mainly relied on the evidence of witness Bhaskar Gurav exhibit 34, P.W.11 Shahaji Patil exhibit 35, P.W.13 Dattatraya Jadhav exhibit 40, P.W.15 Vilas Salunkhe exhibit 42 as well as P.W.6 Prabhakar Thombare exhibit 30. P.W.11 Shahaji Patil exhibit 35 has stated in his deposition that deceased and accused had been to his shop about two and half months prior to the incident and at that time accused himself had told him that he was serving as a bus conductor at Shivaji Nagar S.T.Depot. Not only that but deceased had told him that accused promised to give employment to the deceased as a bus conductor in the S.T.Department and for that purpose the deceased has given money to the accused. Not only that but even the accused had also admitted that he had received such money from the deceased and as such he would be giving employment to deceased. The said witness has also stated that time and again accused was informing to this witness the progress in securing the employment. The said

witness has also stated that he had seen the accused in S.T.Bus conductor's uniform. He was even putting the badge of the S.T.Department. The evidence of this witness is not at all shaken or material contradictions and omissions in his material contradictions and omissions in his evidence. There is also nothing on record to indicate that the said witness was having any special interest in the deceased and animus against the accused. So the evidence of this witness is rightly accepted by the trial court.

8. The prosecution witness no.13 Dattatraya Jadhav exhibit 40 has also stated that one and half months prior to the incident accused had met him in the canteen. At that time he was in S.T.Bus conductors uniform. He told them that he got the job about 9 months back and that he may help the said witness if he had intention to seek employment as bus conductor. He has also stated that he has paid in all about Rs.7,700/- to the accused and the accused had told him that it would be necessary to spend about Rs.10,000/- for securing job in the S.T.Department. It has also

come on record that through the intervention of this witness the accused infact took the room on rental basis at Indapur, as accused was transferred to Baramati. Similarly prosecution witness Rajkumar Tavate, exhibit 46 has also stated that on 1.9.1992 he had been to the hair cutting saloon of the deceased and at that time the accused was present there. He was in bus conductor's uniform. Accused told him that if he would give Rs.10,000/- he would secure job for him. As the said witness was not in a position to pay the said amount he expressed his inability, on that the accused told the said witness that he may pay the said amount by instalments and first he should pay Rs.2000/- and obtain the badge. The said witness therefore paid Rs.2000/- to the accused and accused handed over to him one badge bearing no.65593. However, on badge. The prosecution has also examined witness badge. The prosecution has also examined witness Haridas Patil exhibit 39, who has stated that he had given amount of Rs.5000/- to the father of the deceased as deceased wanted to secure employment as conductor as in S.T.Department. P.W.6 Prabhakar

Thombre exhibit 30 has also sated that the accused had come to him alongwith Dattu Jadhav and the accused took the room on rental basis from him. At that time accused had told him that he was serving in the S.t.department as conductor. The rent was fixed at Rs.200/- per month. Accused paid the said rent, but did not obtain any receipt in his name. The evidence of all these witnesses is not at all shaken or shattered in the cross examination. It is not even suggested to these P.W's that they are having any dispute with the accused and as a result of the same they are deposing falsely against the accused. The learned advocate for the accused argued before us that in the instant case prosecution has not produced any documentary evidence to show that the accused had actually taken money from the deceased or from any other person by giving assurance that he would secure the job for them. It is true that the prosecution has not produced such documentary evidence, but we cannot ignore the fact that in such type of transactions which are infact illegal, no one can expect to prepare any document or receipt. As all these prosecution witnesses

had seen the accused in conductor's uniform with badge, they believed the words of the accused and carried the impression that the accused was serving as S.T.Conductor. These witnesses have not specifically stated as to what was the badge number of the accused. But that would not make any difference, particularly when we find that all these witnesses have categorically stated that they have seen the accused moving in S.T. Conductors uniform with S.T.Badge and all along he was representing to everyone that he was serving in the S.T.Department. The prosecution witness Shahaji patil exhibit 35 and Dattu Jadhav exhibit 40 have clearly stated that they had collected one photo of the accused from his room and showed the same to the Oficer in control room of S.T.Bus depot, Baramati as well as Indapur and at both places they were informed that the accused was not in the employment of the S.T.Department. Merely because the police did not record the statement of the concerned persons from the control room we can't jump to the conclusion that the evidence of Shahaji Patil and Dattatraya Jadhav in this behalf is not true and correct. It is not even the case

of the accused that he was actually serving in the S.T.Department at any time. So, from all this evidence it is crystal clear that the accused was moving in S.T.Conductor's uniform and was pretending himself to be a bus conductor and had given false assurance to different persons including deceased that he would give them employment in the S.T.Department and on that ground had taken money from them but actually did not give any employment to them and thus he clearly cheated them.

9. The question arises, whether in view of this evidence it can be said that the accused has committed the offence punishable under section 170 of I.P.C. From perusal of section 170 it is very clear that for application of the said section it must be shown that the accused assuming the character of public servant and pretending himself to be a bus conductor, did or admitted to do something under colour of such office. In the instant case, it must be noted that though the accused was all along moving in conductor's uniform and pretending himself to be a conductor,

he has not actually done any act which normally a bus conductor is supposed to do. It means he has not collected any money by issuing tickets to passengers or has not done any other act which is the usual duty or act of a conductor. So, it appears that the offence committed by the accused infact does not fall under section 170 of I.P.C. but it falls under section 171 of I.P.C. The said section runs as follows :

> **public servant with fraudulent intent** :- Whoever, not belonging to a certain class of public servants, wears any garb or carries any token resembling and garb or token used by that class of public servants, with the intention that it may be believed, or with the knowledge that it is likely to be believed, that he belongs to that class of public servants, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.

This offence is obviously of less gravity then the offence under section 171 of I.P.C. but of similar nature. So it is necessary to hold that the prosecution has proved the offence punishable under section 171 and not under section 170 of I.P.C. Infact it appears that the accused has

cheated the deceased and others and has thereby committed an offence punishable under section 420 of I.P.C. However, it seems that no charge was framed against the accused for the said offence under section 420 I.P.C.

9. The prosecution story with regard to above mentioned charge under section 170 assumes more importance in connection with the main offence i.e. of murder. It appears from the prosecution case that the accused and the deceased had come in contact with each other only because the accused gave assurance to deceased for securing employment for him in S.T.Department. The prosecution has established that the accused had given false promises to the deceased for securing the employment and on that ground had also taken substantial amount from the deceased. However, the accused was not able to secure the employment for him. When Shahaji Patil and Dattu Jadhav realised that accused has cheated the deceased and accused was likely to be exposed by them the accused must have decided to finish deceased. Thus there was motive for the alleged crime.

10. It is not in dspute that on 18.9.1992 police had received information that dead body of one person is lying by the side of the road i.e. at Vairag Mohol road and accordingly initially A.D. was registered and then police went to the said place, drew the inquest panchanama and sent the dead body for post mortem. The prosecution has produced at exhibit 13 the post mortem report. The said report is infact not disputed by the defence. From the perusal of the same it appears that the dead body was received in the hospital at Vairag on 18.9.1992 at about 5 p.m. and thereafter post mortem was carried out by Dr.M.K.Patil and at that time he found following injuries :

1. Incised wound- near right frontal eminence of scalp 7cm x 2cm x 1 cm

2. Incised wound- Near left temporal eminence of scalp 9cm x 2cm x 1cm

3. Incised wound-near right mastoid process 9cm x

2 cm x 1cm

4. Incised wound-Above left eye 4cm x 1cm x 1cm

5. Incised wound- near left ear 7cm x 4cm x 4cm

6. Incised wound-left pinna of ear 1cm x 1/2cm x1/2cm

7. 11 incised wounds over right palms

8. Incised wound-left wrist 4cm x 1cm x 1cm

9. Incised wound-left palm 3cm x 1cm x 1cm

10. Incised wounds-(Total 12 wounds) over right side of cheek measuring 2 to 7 cm x 2cm x 2cm

11. Incised wounds (Total 27 wounds) left side of neck
& left shoulder measuring 2 to 8 cm x 3cm x 2cm.

The doctor has specifically stated that the said

injuries were due to excessive haemorrhage due to injuries over neck. It appears from the post mortem report that decomposition of the body was in progress. So, from the post mortem notes it is very clear that the death of the deceased was homicidal. It is also not even the case of the accused that the death of deceased was not homicidal.

10. The main and material question is whether the said death was caused at the hands of the accused. At the outset it must be mentioned that there is no eye witness to the incident. The prosecution case rests on circumstantial evidence. The law with regard to circumstantial evidence is well settled. In various authoritative pronouncements the Apex court has observed that where inference of guilt of accused person is to be drawn from circumstantial evidence, those circumstances must, in the first place be cogently established and the said circumstance should be of the definite tendency, pointing towards the guilt of the accused, and totality of evidence must unerringly lead to the conclusion that within all

human probabilities the offence was committed by the accused and none else. So, bearing in mind the above observations, we have to scan the evidence on record and find out whether the same is sufficient to point out the guilt of the accused.

11. The first circumstantial evidence is in the nature of accused and deceased were last seen together. The prosecution witness no.13 Dattatraya Jadhav has stated that on 14.9.1992 he had seen deceased Dnyaneshwar and accused at the room of the accused and at that time prosecution witness Shahaji was also present there. He has further stated that on that day deceased told him that he has paid Rs.10,000/- to accused and accused had promised to secure employment for the deceased in S.T.department and the said work was to be completed by 18th. He has also stated that deceased was infact at the room of the accused till 16th morning. On 16th he told accused that it will not be possible for him to accompany and on that day accused took Dnyaneshwar with him for going to Bearish. He has also stated that on that

day in the evening accused and deceased were to come to his residence for meals, but they did not come.

12. P.W.11 Shahaji Patil has stated that on 17th at about 10 p.m. he went to the room of the same as on previous occasion he had come to know same as on previous occasion he had come to know the technique of opening the lock. Accused returned to his room at about 1.15 a.m. As he was alone, Shahaji Patil made query with him about deceased Dnyaneshwar and on that accused told him that he has gone to Baramati alongwith Mhaske Saheb. He has further stated that when he awoke at about 7 a.m. he found that accused had already left the room. He therefore went to S.T.Stand. Shahaji Patil met him there. After some time accused also came there. When they made query accused told them that deceased has gone to Baramati Pandharpur duty. Both the witnesses therefore insisted that accused should arrange a meeting with Dnyaneshwar. Hence all the three went to Baramati Then accused told the said two witnesses that he would proceed to Pandharpur for

duty and they should enquire with control cabin. Accordingly Shahaji Patil and Dattu Jadhav went to S.T.Control Cabin at Baramati. There they showed the photograph of the accused which they had brought with them, to the concerned person. However, they were informed that no such person is in the employment of S.T.Department. He therefore returned to Indapur to the room of the accused. Accused also returned within 10-15 minutes. When they made query with him he again told the witnesses that Dnyaneshwar is doing his duty well and has gone to Pandharpur from Baramati. Shahaji Patil therefore got annoyed and caught hold the neck of the accused. At that time Dattu Jadhav noticed that there were some blood stains on the banian of the accused. He had also received some minor injuries to his fingers. When both of them made query with him he told them that he had a scuffle with his friend at Tembhurni. In that process Shahaji Patil took out some currency notes from the pocket of the accused and he noticed that the said notes were blood stained. Both the prosecution witnesses therefore suspected that accused might have done something wrong to

deceased Dnyaneshwar. They therefore decided to take the accused to his room and for that purpose they boarded Baramati Tuljapur bus. Accused sat in the driver's cabin while witness Shahaji Patil and Dattu Jadhav sat in the rear portion. When the bus reached at the junction of Indapur, accused got down from the driver's side and ran away. Witness Shahaji Patil and Dattu Jadhav also got down and chased him but they could not trace the accused. They, therefore again went to the room of the accused. They came to know from the neighbours that accused had come from the back door and has taken away his luggage. The witnesses therefore started searching the accused. On the next day when they came to know that the accused is resident of Degaon, they went to Degaon and at that place when they made query with some persons who were passing by the road, and told them that they were in search of their friend, those persons told the prosecution witnesses Shahaji Patil and Dattu Jadhav that two to three days back murder had taken place and the dead body is in the custody of the police. Both the prosecution witnesses therefore went to the police

station and ultimately identified the dead body and clothes of the deceased. The prosecution has produced at exhibit 10 the inquest panchanama exhibit 9. From the perusal of the same, it is very exhibit 9. From the perusal of the same it is very clear that the dead body of deceased Dnyaneshwar was found by the side of road on 18th morning. The deceased and accused were last seen together by prosecution witnesses Shahaji Patil and Dattu Jadhav on 16th morning. Nobody has seen deceased alive thereafter. Naturally, it was the responsibility of the accused to explain as to when and where he and deceased parted, but we find that no such explanation is given by the accused. On the contrary, we find that since 17th, whenever the prosecution witness Shahaji Patil and Dattu Jadhav made query with accused regarding whereabouts of deceased, everytime the accused gave false answers and told them that deceased has gone to Barshi, Pandharpur, Baramati etc. Had it been the case that accused would have said that he parted with the deceased on 16th morning at a particular place and thereafter he was not knowing as to where deceased had gone, it would have been

a different thing, but we find that everytime the accused falsely represented that deceased was alive and has gone to a particular place. So, deliberately giving false information to prosecution witnesses so as to create impression that deceased is alive speaks volumes and shows the guilty mind of the accused.

13. At this juncture, only it would be appropriate to consider the other circumstance namely the motive for the crime. It is already mentioned above that the prosecution has proved beyond reasonable doubt that the accused was all along posing himself to be a conductor serving in the S.T.department and had given false promises to several persons including deceased, that he would secure employment for them and for that purpose he had taken huge amounts from them. The deceased had also paid about Rs.10,000/- to the accused. This was known to the witnesses Shahaji Patil as well as Dattu Jadhav. As a result of the same they were all along after the accused and insisting that accused should show that he had secured job for Dnyaneshwar. As the accused

himself was not serving in the S.T.Department and he had taken money on false promise. it was difficult for him to show that he has secured any job for deceased. He therefore wanted to overcome the said situation and it seems that in that process he thought that it is better to inform the witnesses that deceased had infact gone on duty. But when the witnesses insisted to have a meeting with Dnyaneshwar i.e. deceased, the accused took decision to finish the deceased. So, as the accused was found in such difficult situation he committed the murder of the deceased. Thus, there was motive for the crime in question. So this is another important circumstance which lends support to the prosecution version.

14. It is pertinent to note that the accused realised that prosecution witness Shahaji Patil and Dattu Jadhav are after him and they had infact doubt about him. He escaped from their clutches by getting down from the S.T.bus from driver's side and thereafter absconded. So, this also suggests that the accused must have committed the offence in question. Witness Shahaji Patil as

well as Dattu Jadhav have stated that on 18th when they questioned accused and Shahaji Patil held neck of the accused, they found that there were some blood stains on the banian of the accused. It is pertinent to note that after accused was arrested the said banian has been recovered from the person of the accused and when the same was sent to C.A. it was found containing blood stains of "O" Group which was of the deceased. It is true that the panch witness Vilas Sherkhane, exhibit 26, has not fully supported the prosecution. In his examination in chief he had infact stated that police attached the banian from the person of the accused on 19.9.1992, under panchanama exhibit 25. However, curiously enough in cross examination he has stated that when he went to police station banian was in the hands of the accused. However, merely because this witness has turned hostile we cant jump to the conclusion that his evidence in this behalf is false. It must be noted that Investigating Officer API Rane exhibit 48 has stated that on 20.9.1992 he arrested the accused and the banian in question has been attached from the person of the accused

under panchnama exhibit 25. It is pertinent to note that there is no reason why API Rane should depose falsely. Besides this we also can not ignore the fact that the accused has not given any satisfactory explanation about this in his statement under section 313 of Cr.P.C. So the finding of blood stained banian on the person of the accused also lends support to the evidence of two prosecution witnesses and indicates that the accused has committed the offence in question.

15. The prosecution witness Vilas Sherkhane, exhibit 26 has also stated that on 20.9.1992 whenhe was in the police station, accused made a statement before the police in his presence that he would produce the knife from the adjacent field. Accordingly police drew the memorandum exhibit 27. However, surprisingly the said witness has further stated that nothing was seized in his presence. So it was argued on behalf of the defence that the evidence of this witness is of no use to the prosecution and alleged discovery is not proved. Here again it is to be noted that API Rane, exhibit 48 has clearly stated that on

that day accused had made a statement before him in presence of panchas that he would produce knife and accordingly memorandum exhibit 27 was drawn and thereafter accused had infact taken the police and panchas to the field which was adjacent to the place of offence and from that field accused produced one knife and it was attached under panchanama. It must be noted that the panch witness Sherkhane has also admitted that the said panchanama bears his signature. Though he has stated that as police asked him to sign, he signed the panchanama, it is very difficult to believe that a sane witness would sign panchanama in which there is reference of some important events , if really such event had not taken place. There is nothing on record to indicate that the said panch was habitual panch or that he was under obligation of police and as a result of the same he signed the panchanama though infact nothing had taken place in his presence. So, under such circumstances, merely because the said witness has not supported the prosecution, the evidence of prosecution in this behalf can not be discarded particularly when P.I. Rane has duly proved the

same. From the C.A.report exhibit 54, it is very clear that when the said knife was sent to C.A. blood stains of "O" group were found on the same. Besides this nails of the accused were seized and sent to C.A. and human blood was found on the same. Not only that but it has come in evidence that accused had taken bicycle on hire on 17th as well as on 19th. The necessary register from the concerned cycle shop showing the relevant entry is produced by the prosecution. It is pertinent to note that the said cycle was not returned by the accused himself to the cycle shop, but he had left the said cycle with some other person and asked him to return the same. As there were some blood stains on the rod some portion of the said rod was scratched and sent the same to C.A. Human blood was detected in the said portion. Thus, all this circumstantial evidence also points out the guilt of the accused.

16. The prosecution has also placed reliance on the evidence regarding recovery of leather bag from the room of the accused. Prosecution witness Kashinath Langote, exhibit 19 has stated that on

27.9.1992 police had called him for panchanama at the room of the accused and at that time police attached one leather bag resembling with the bag which is ordinarily used by the bus conductor, which was hanging at the wooden stick in the said room. When the said bag was opened it was found containing school leaving certificate, mark list and caste certificate of the deceased. No doubt, as the documents were very relevant for seeking employment the same must have been obtained by the accused from the deceased. As the accused was residing in the said room, finding of those documents at that place carries much importance. However, it has come on record that the accused had taken away his luggage on 18th. One does not know what happened thereafter, so far as the said room is concerned. So, under such circumstance, finding of the said bag after about nine days in the said room, particularly when it is nobody's case that the said room was locked by the owner in the same condition and nobody had entered the room, it is not safe to accept this evidence as it is. However, merely because there is some infirmity in this evidence we can't jump to the

conclusion that the entire evidence adduced by the prosecution is false or concocted. On the contrary, as mentioned above, there are numerous circumstances, which taken together clearly establish the guilt of the accused. Thus, we have no hesitation to hold that the trial court has considered the entire evidence in its proper perspective and has rightly held that the circumstantial evidence on record is quite cogent, consistent and convincing so as to lead to the conclusion that the accused has committed the offence in question. In this view of the matter there is no substance in this appeal.

. The order of conviction passed against the accused for the offencepunishable under section 302 of IPC, by the Court of IInd Additional Sessions Judge, Solapur, dated 31st December 1993 in Sessions Case No.333 of 1992 is confirmed.

. The order of conviction and sentence passed by the IInd Additional Sessions Judge, Solapur, against the accused for the offence punishable under section 170 of I.P.C. is

modified and accused is convicted for the offence punishable under section 171 of IPC instead of section 170 of IPC and is sentenced to suffer r/i. for three months.

. Accused to surrender his bail forthwith.

. The accused is entitled to get set of for the period of detention undergone by him in connection with this offence as per section 428 of Criminal Procedure Code.

. The appeal is dismissed.

(S.S.PARKAR, J)

(S.R.SATHE, J)